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KATHARINE SAVIN

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KATHARINE SAVIN,
Plaintiff,

v.

CITY AND COUNTY OF SAN FRANCISCO;
ARCHDIOCESE OF SAN FRANCISCO;
FATHER BRUCE LERY; HEATHER
HARRIS, M.D.; ANNE KINDERMAN, M.D.;
and DOES 1 through 10, inclusive,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES,
EQUITABLE AND/OR INJUNCTIVE
RELIEF**

VIOLATIONS OF THE CIVIL RIGHTS
ACT, 42 U.S.C. § 1983; VIOLATIONS OF
THE FAIR EMPLOYMENT AND
HOUSING ACT, GOVERNMENT CODE §
12940 ET. SEQ.

JURY TRIAL DEMANDED

Plaintiff KATHARINE SAVIN complains and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff KATHARINE SAVIN ("Plaintiff") is, and at all relevant times hereto, has been a resident of the State of California.

1 2. Plaintiff is informed and believes and thereby alleges that Defendant CITY AND
2 COUNTY OF SAN FRANCISCO, is and at all relevant times hereto, was a public entity that
3 operated in the State of California, County of San Francisco.

4
5 3. Defendant CITY AND COUNTY OF SAN FRANCISCO, including its
6 departments, units, and/or political subdivisions, is and at all relevant times hereto, was an
7 employer operating as a public entity within the State of California, County of San Francisco,
8 who regularly employed more than 15 persons. Plaintiff was assigned to work at the San
9 Francisco General Hospital (hereinafter, “Defendant” or “San Francisco General Hospital”).

10
11 4. Defendant San Francisco General Hospital is a city municipality located within the
12 State of California and doing business as a government entity under color of state authority and
13 law.

14
15 5. Plaintiff is informed and believes and thereby alleges that Defendant
16 ARCHDIOCESE OF SAN FRANCISCO (hereinafter “Archdiocese” or “Defendant”), is and at
17 all relevant times hereto, was an employer that operated in the State of California, County of San
18 Francisco.

19
20 6. Plaintiff is informed and believes that Defendant Archdiocese regularly employed
21 more than 15 persons.

22
23 7. Defendant FATHER BRUCE LERY (“Father Lery” or “Defendant”) is an
24 individual whose residence is located in the State of California. Defendant Father Lery is a
25 member of the Palliative Care Team at San Francisco General Hospital, and, at all relevant times,
26 worked with Plaintiff at San Francisco General Hospital. For purposes of the cause of action
27
28

1 under the Civil Rights Act, Father Lery is being sued in his official and/or individual capacity
2 acting under color of law.

3
4 8. At all relevant times, Plaintiff is informed and believes that Father Lery was
5 employed jointly by both Defendants San Francisco General Hospital and the Archdiocese.
6 Defendant Archdiocese assigned Father Lery to the Palliative Care Team at San Francisco
7 General Hospital, who managed and controlled all aspects of Father Lery's employment, while
8 Father Lery worked at San Francisco General Hospital.

9
10 9. Defendant HEATHER HARRIS, M.D. ("Dr. Harris" or "Defendant") is an
11 individual whose residence is located in the State of California. Defendant Dr. Harris is a
12 supervisor and/or managerial employee of the Palliative Care Team at San Francisco General
13 Hospital, and, at all relevant times, was one of Plaintiff's supervisors. For purposes of the cause
14 of action under the Civil Rights Act, Defendant Dr. Harris is being sued in her official and/or
15 individual capacity acting under color of law.

16
17 10. Defendant ANNE KINDERMAN, M.D. ("Dr. Kinderman" or "Defendant") is an
18 individual whose residence is located in the State of California. Defendant Dr. Kinderman is a
19 supervisor and/or managerial employee of the Palliative Care Team at San Francisco General
20 Hospital, and, at all relevant times, was one of Plaintiff's supervisors. For purposes of the cause
21 of action under the Civil Rights Act, Defendant Dr. Kinderman is being sued in her official and/or
22 individual capacity acting under color of law.

23
24 11. This Court has jurisdiction and venue over this action in that Defendants employed
25 Plaintiff within this judicial district in the State of California. This Court has supplemental
26 jurisdiction over the state law claims, in that they arose from the same common nucleus of
27 operative facts, as the federal claims.

1 16. During the period of time that Plaintiff worked at the Palliative Care Unit, she
2 performed her duties in an acceptable and professional manner. Plaintiff received consistent
3 praise from members of the public, as well as the management staff, and Plaintiff received
4 positive performance evaluations. At all relevant times, Plaintiff possessed the requisite skills in
5 her position and was capable of performing the essential functions of her job.

6
7 17. Commencing in February 2015, and continuing for several months throughout her
8 employment with San Francisco General Hospital, Father Lery created a hostile work
9 environment towards Plaintiff based upon her sex, and Father Lery repeatedly and consistently
10 engaged in sexual harassment towards Plaintiff in the workplace.

11
12 18. Father Lery found a way to sexualize most of his communications to Plaintiff. He
13 told her that they would make a “cute couple” and invited her on a “date” to a “romantic”
14 location. He consistently touched Plaintiff’s shoulders, back, and thighs in the workplace, and he
15 made several comments about Plaintiff’s physical appearance and clothes.

16
17 19. On another occasion, Plaintiff spent a night in the hospital caring for a friend on a
18 Sunday. Father Lery greeted her in the morning, while she was still in her pajamas, with a long
19 uncomfortable hug. When Father Lery released his grasp on Plaintiff, he continued to hold
20 Plaintiff’s shoulders, and he told Plaintiff, “I love you.”

21
22 20. Father Lery grabbed Plaintiff by the collar of her shirt in the workplace.

23
24 21. During a team photograph, Father Lery placed his hands and fingers on Plaintiff’s
25 bare skin under her shirt, just above her breast, in an alleged attempt to help her “tuck” her collar
26 in.

1 22. When Father Lery placed his hands down Plaintiff's shirt, he whispered to
2 Plaintiff, "I hope it is ok that I am doing this." Plaintiff immediately objected and asked that he
3 stop.

4
5 23. Father Lery hugged and held Plaintiff for an unreasonable amount of time when he
6 would greet her in the workplace. On more than one occasion, he placed his hands on her
7 shoulders, and said, "I love you so much."

8
9 24. On another occasion, Father Lery asked Plaintiff to come back to his private
10 office, so that he could give her a back and shoulder massage. Plaintiff declined.

11
12 25. Father Lery also placed his hands on a female patient's breasts, and he placed his
13 hands just above a patient's sister's breast, who only spoke Spanish.

14
15 26. Father Lery further made consistent remarks and comments about other females in
16 the workplace, and Plaintiff is informed and believes that at least three other female employees of
17 San Francisco General Hospital made sexual harassment complaints against Father Lery.
18 Plaintiff is informed and believes that another female social worker, and two female nurses made
19 workplace complaints of sexual harassment directly against Father Lery, but Defendants failed to
20 take any reasonable measures to prevent the conduct from continuing in the workplace.

21
22 27. After enduring several incidents of harassment, Plaintiff verbally reported the
23 conduct to Defendants Harris and Kinderman. Defendant Harris replied, "Not again!" But,
24 Defendants did nothing to investigate the complaint, or take any reasonable measures to address
25 the conduct in the workplace.

1 28. After the conduct continued, Plaintiff reported the conduct in writing to her
2 managers. Plaintiff sent an email complaint to her supervisors, Defendants Harris and
3 Kinderman, with the hope that her complaint would be taken seriously. In response, Defendant
4 Kinderman called Plaintiff on her personal cell phone, urged Plaintiff not to report the incident,
5 and then actually demanded that Plaintiff cover up the email that she had sent. Defendants told
6 Plaintiff, "You cannot send these things via email" as "somebody could get in trouble."
7 Defendants further told Plaintiff, "I want to protect everyone on our team, including Father Bruce,
8 and that can't happen if we go through formal routes. So please don't put anything like this in
9 writing again." Plaintiff was visibly stunned, and she was compelled to seek treatment and care
10 for aggravation of post-traumatic stress disorder ("PTSD") with her treating physician.

11
12 29. In June 2015, Plaintiff was contacted by Defendants' Human Resources
13 Department. Plaintiff was informed that another nurse on the Palliative Care Team had contacted
14 Human Resources about Father Lery's sexual harassment in the workplace.

15
16 30. Shortly hereafter, the hospital directors asked Plaintiff to attend a meeting to
17 explain what happened with Father Lery. The following week, the EEO office of the Human
18 Resources Department contacted Plaintiff and asked that she participate in an investigation.
19 Plaintiff was advised that she could file a formal complaint with the Department of Fair
20 Employment and Housing, or she could file a complaint with the Human Resources' EEO office.
21 Plaintiff then lodged a formal written complaint to the EEO office of the Human Resources
22 Department of Defendant San Francisco General Hospital. The Human Resources Department
23 informed Plaintiff that they would advise her of the outcome of the investigation.

24
25 31. Once Plaintiff presented her harassment complaint to the EEO office, Melissa
26 Leblanc, an EEO representative, informed Plaintiff that there was nothing that they could do to
27 discipline Father Lery, as Defendants claimed he was not a "City" employee.

1 32. Instead, the proposed solution offered by Ms. Leblanc was to move Plaintiff to a
2 “different unit” – even though she was the victim and reporting party.

3
4 33. Plaintiff’s treating physician then placed her on medical leave for a finite period of
5 time until August 2015.

6
7 34. Immediately after Plaintiff lodged her formal complaint with the Human
8 Resources office, Plaintiff was the subject of workplace retaliation, including the failure to
9 properly and reasonably accommodate her medical condition and disability, thus subjecting
10 Plaintiff to constructive termination, and, when Plaintiff made job inquiries in her field,
11 Defendants actively interfered with Plaintiff’s efforts, and they mischaracterized Plaintiff’s
12 qualifications and work.

13
14 35. For example, in September 2015, after Plaintiff had made workplace complaints to
15 the EEO office, Defendant Dr. Kinderman sent an email to a representative at Stanford Health
16 Care stating that Plaintiff had left San Francisco General Hospital as a result of her “medical
17 issues” and that Plaintiff was taking time off “to think about next steps, professionally.”

18
19 36. Additionally, after Plaintiff presented her harassment complaint to the EEO office,
20 Defendants failed to reasonably accommodate Plaintiff’s medical condition and/or disability. On
21 or about August 4, 2015, at the expiration of Plaintiff’s leave of absence, her treating physician
22 requested reasonable accommodations so that Plaintiff could return to the workplace. Plaintiff’s
23 treating physician requested job restructuring and/or reassignment, and assisted devices and
24 services, which did not constitute an undue burden on the employer.

42. Defendants violated Plaintiff's First Amendment rights, in that Defendants retaliated against Plaintiff for making complaints of public concern to Defendants, and violated Plaintiff's privacy rights by improperly disclosing private medical and employment information pertaining to Plaintiff, and unlawfully touched Plaintiff's body without her consent.

43. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered loss of employment, indignity, great humiliation and emotional distress manifesting in physical symptoms.

44. Defendants' actions have caused and continue to cause Plaintiff substantial losses in earnings, significant reputation and professional injury, loss of promotional opportunities and other employment benefits, lost wages, attorneys' fees, future earnings and benefits, cost of suit, humiliation, embarrassment and anguish, all to her damage in an amount according to proof.

45. As to the individual Defendants only, the acts of these said defendants as alleged herein, were intentional, oppressive, fraudulent, and done with ill will and intent to injure Plaintiff and to cause Plaintiff mental anguish, anxiety, and distress. The Defendants' acts were done in conscious disregard of the risk of severe emotional harm to Plaintiff and with the intent to injure Plaintiff, constituting oppression, fraud, malice under California Civil Code §3294, entitling Plaintiff to punitive damages against these defendants only.

SECOND CAUSE OF ACTION

(Violations of FEHA – Gender Discrimination – Defendants San Francisco General Hospital and Archdiocese of San Francisco only)

46. Plaintiff realleges and incorporates by reference Paragraphs 1 through 45 of this Complaint as though fully set forth herein.

1 47. California Government Code § 12940, et. seq., provides that it is an unlawful
2 employment practice for an employer to discriminate on the basis of gender or sex in the terms
3 and conditions of employment.

4
5 48. Defendants violated Government Code § 12940, et. seq. with regard to Plaintiff
6 when they discriminated against Plaintiff on the basis of her gender and sex.

7
8 49. Defendants' conduct toward Plaintiff as alleged above, constitutes an unlawful
9 employment practice in violation of California Government Code § 12940.

10
11 50. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered loss
12 of employment, indignity, great humiliation and emotional distress manifesting in physical
13 symptoms.

14
15 51. Defendants' actions have caused and continue to cause Plaintiff substantial losses
16 in earnings, significant reputation and professional injury, loss of promotional opportunities and
17 other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and
18 benefits, cost of suit, humiliation, embarrassment and anguish, all to her damage in an amount
19 according to proof.

20
21 **THIRD CAUSE OF ACTION**

22 (Violations of FEHA – Retaliation – Defendants San Francisco General Hospital and Archdiocese
23 of San Francisco only)

24
25 52. Plaintiff realleges and incorporates by reference Paragraphs 1 through 51 of this
26 Complaint as though fully set forth herein.

53. California Government Code § 12940(h) provides that it is an unlawful employment practice for an employer or any other person to retaliate against an employee for engaging in a protected activity.

54. Defendants violated Government Code § 12940 with regard to Plaintiff when it engaged in adverse employment actions in retaliation for making internal complaints to the EEO office based upon sexual harassment that created a hostile work environment.

55. Defendants' conduct toward Plaintiff as alleged above, constitutes an unlawful employment practice in violation of California Government Code § 12940.

56. As a direct and proximate result of Defendants' retaliatory conduct, Plaintiff has suffered loss of employment, indignity, great humiliation and emotional distress manifesting in physical symptoms.

57. Defendants' actions have caused and continue to cause Plaintiff substantial losses in earnings, significant reputation and professional injury, loss of promotional opportunities and other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and benefits, cost of suit, humiliation, embarrassment and anguish, all to her damage in an amount according to proof.

FOURTH CAUSE OF ACTION

(Violations of FEHA – Sexual Harassment – Defendants Lery, San Francisco General Hospital, and Archdiocese of San Francisco only)

58. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 57 of this Complaint as fully set forth herein.

1 59. California Government Code § 12940 provides that it is an unlawful employment
2 practice for an employer or any other person to harass or create a hostile work environment for an
3 employee based upon sex or gender.

4
5 60. Defendants violated Government Code § 12940 with regard to Plaintiff when they
6 engaged in a hostile work environment based upon sex or gender, and harassed Plaintiff in the
7 workplace based upon her sex or gender.

8
9 61. Defendants' conduct toward Plaintiff as alleged above, constitutes an unlawful
10 employment practice in violation of California Government Code § 12940.

11
12 62. As a direct and proximate result of Defendants' harassing conduct, Plaintiff has
13 suffered loss of employment, indignity, great humiliation and emotional distress manifesting in
14 physical symptoms.

15
16 63. Defendants' actions have caused and continue to cause Plaintiff substantial losses
17 in earnings, significant reputation and professional injury, loss of promotional opportunities and
18 other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and
19 benefits, cost of suit, humiliation, embarrassment and anguish, all to her damage in an amount
20 according to proof.

21
22 64. As to individual Defendant Lery only, the acts of this said defendant as alleged
23 herein, was intentional, oppressive, fraudulent, and done with ill will and intent to injure Plaintiff
24 and to cause Plaintiff mental anguish, anxiety, and distress. Defendant Lery's acts were done in
25 conscious disregard of the risk of severe emotional harm to Plaintiff and with the intent to injure
26 Plaintiff, constituting oppression, fraud, malice under California Civil Code §3294, entitling
27 Plaintiff to punitive damages against this defendant on this cause of action.

FIFTH CAUSE OF ACTION

(Violations of FEHA – Failure to Accommodate Medical Condition/Disability – Defendants San Francisco General Hospital, and Archdiocese of San Francisco only)

65. Plaintiff realleges and incorporates by reference Paragraphs 1 through 64 of this Complaint as though fully set forth herein.

66. California Government Code § 12940 provides that it is an unlawful employment practice for an employer to fail to reasonably accommodate an employee's medical condition and/or disability, or discriminate against an employee based upon medical condition or disability.

67. Defendants violated Government Code § 12940 with regard to Plaintiff when it failed to reasonably accommodate Plaintiff's medical condition and/or disability, and discriminated against Plaintiff based upon her medical condition and/or disability.

68. Defendants' conduct toward Plaintiff as alleged above, constitutes an unlawful employment practice in violation of California Government Code § 12940.

69. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered loss of employment, indignity, great humiliation and emotional distress manifesting in physical symptoms.

70. Defendants' actions have caused and continue to cause Plaintiff substantial losses in earnings, significant reputation and professional injury, loss of promotional opportunities and other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and benefits, cost of suit, humiliation, embarrassment and anguish, all to her damage in an amount according to proof.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendants, and each of them as follows:

1. For general damages in an amount according to proof;
2. For special damages in an amount according to proof;
3. For prejudgment interest in an amount according to proof;
4. For punitive damages in an amount according to proof;
5. For equitable and/or injunctive relief;
6. For statutory penalties, if applicable;
7. For reasonable attorney's fees and cost of suit therein;
8. For such other and further relief as the court may deem proper.
9. Plaintiff demands a trial by jury.

Dated: October 1, 2016

BROWN | POORE LLP

By: //s// David M. Poore

David M. Poore

Attorneys for Plaintiff